D.T.E. 99-20

Petition of AT&T Communications of New England, Inc., pursuant to 220 C.M.R. § 1.04, requesting the Department of Telecommunications and Energy to establish a mediated collaborative process to resolve disputes in the wholesale provisioning of loops, number porting, and other elements or services by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.

APPEARANCES: Robert J. Aurigema

Michael J. Morrissey

Katherine P. White

AT&T Communications, Inc.

32 Avenue of the Americas, Room 2700

New York, NY 10013

- and -

Jeffrey F. Jones, Esq.

Laurie S. Gill, Esq.

Kenneth W. Salinger, Esq.

Joseph F. Hardcastle, Esq.

Palmer & Dodge, LLP

One Beacon Street

Boston, Massachusetts 02108

FOR: AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

Petitioner

- INTRODUCTION AND PROCEDURAL HISTORY

On February 8, 1999, AT&T Communications of New England, Inc. ("AT&T") filed with the Department of Telecommunications and Energy ("Department") a petition requesting that the Department establish a mediated collaborative process to resolve disputes between competitive local exchange carriers ("CLECs") and New England Telephone and Telegraph d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic") with respect to Bell Atlantic's wholesale provisioning operations including, but not limited to, loops and number porting. The Department docketed AT&T's petition as D.T.E. 99-20.[(1)]

Pursuant to notice duly issued on April 2, 1999, the Department convened a public hearing on May 4, 1999. This hearing was followed immediately by a procedural conference. The following entities filed petitions for intervention with the Department: Breakthrough Massachusetts; CTC Communications, Corp. ("CTC"); ChoiceOne Communications of Massachusetts, Inc.; CoreComm Limited and CoreComm Massachusetts, Inc. ("CoreComm"); MCI WorldCom, Inc. ("MCI"); MediaOne Telecommunications of Massachusetts ("MediaOne"); NEVD of Massachusetts, LLC; Network Plus, Inc.; Norfolk County Internet, Inc.; RCN-BecoCom, LLC ("RCN"); RNK, Inc. ("RNK"); Sprint Communications Co.; and Telecommunications Resellers Association ("TRA").

In accordance with the adopted procedural schedule, on May 14, 1999, AT&T filed with the Department a more detailed collaborative proposal ("AT&T Proposal"). Bell Atlantic, CTC, MCI, RCN, RNK, and TRA each filed a response to AT&T's proposal on May 26, 1999. Reply comments were filed on June 7, 1999, by AT&T, Bell Atlantic, CTC, CoreComm, MCI, and MediaOne. In addition, on June 9, 1999, MCI filed, outside of the procedural schedule, a response to Bell Atlantic's reply comments.

II. SUMMARY OF AT&T'S PETITION AND POSITIONS OF THE COMMENTERS

A. Summary of AT&T's Petition and Proposal

AT&T has requested a collaborative process for resolving disputes arising in the wholesale provision of loops, number porting, and other elements or services by Bell Atlantic (AT&T Petition at 1). According to AT&T, Bell Atlantic has not consistently provided unbundled loops via so-called "hot cuts"[(2)] in a timely fashion, nor has it consistently coordinated such hot cuts with the porting of the retail customer's telephone number (id.). Moreover, AT&T asserts that Bell Atlantic has not promptly corrected

service problems resulting from its provisioning errors and lacks procedures to ensure that such problems not recur (id.). AT&T argues that these failures by Bell Atlantic disrupt service to AT&T's retail customers and impair AT&T's ability to compete with Bell Atlantic (id. at 1-2).

AT&T requests the collaborative process be established, first of all, to address and resolve problems with the provisioning of unbundled loops and number porting via coordinated hot cuts and, secondly, to address and resolve any other problems in the provisioning of network elements that may be identified by participants in the requested proceeding (id. at 3). In addition, AT&T argues that new or modified performance measurements are necessary before the Department tests Bell Atlantic's operations support systems ("OSS")[(3)] (AT&T Proposal at 12, AT&T Reply Comments at 6). According to AT&T, the issues listed in its petition and proposal must be resolved, for administrative efficiency, before OSS testing. AT&T argues further that, until the policy and process issues are resolved, via a collaborative, "neither Bell Atlantic, the Department nor [sic] the CLECs will know what systems Bell Atlantic will actually deploy, what complementary systems the CLECs must construct, and what systems KPMG must test" (AT&T Reply Comments at 6).[(4)]

In structuring the collaborative, AT&T argues that the Department should require Bell Atlantic to develop, as the starting point, detailed flow diagrams for all of its processes (e.g., provisioning of network elements and other services to CLECs) (AT&T Proposal at 6). In addition, AT&T contends that business rules[(5)] must be developed and carefully documented so that CLECs can develop the necessary systems to interface with Bell Atlantic to allow pre-order and order functions to proceed seamlessly (id. at 9). Next, AT&T argues that the identification and negotiation of performance metrics must occur in a collaborative so that the metrics will appropriately be applied to the actual processes in place (id. at 6-7). Finally, AT&T contends that remedies and penalties for noncompliance must be established through the collaborative process to assure that performance problems do not adversely affect competition (id. at 7, 9).

B. Positions of the Commenters

1. Are additional performance metrics, business rules and standards, as advocated by AT&T, necessary in Massachusetts?

a. CLECs

MCI argues that existing metrics adopted as part of the Consolidated Arbitrations proceedings[(6)] do not cover many of the necessary aspects of the provisioning process (MCI Reply Comments at 5). MCI agrees with AT&T that the following provisioning issues must be addressed through the development of new business rules: loop provisioning; installation and testing; local number portability provisioning; and

interconnection trunk provisioning. To that list, MCI would add provisioning unbundled network element ("UNE") combinations such as UNE-platform and enhanced extended loops, and unbundled digital subscriber line and integrated digital loop carrier loops (MCI Comments at 3).

MediaOne argues that while the performance standards in the Consolidated Arbitrations were comprehensive, CLECs' experience with the provisioning processes have demonstrated that something additional is needed (MediaOne Reply Comments at 4). Namely, MediaOne argues that a collaborative effort in Massachusetts should address: the creation of a metric on the accuracy of hot cut loop provisioning; gathering data on the average interval for completion of hot cut loops; and the creation of a metric on the accuracy and timeliness of number porting when a carrier does not purchase an unbundled loop (id.). In addition to those measures cited by other CLECs, RCN would like a collaborative to address the following issues: CLEC access to Bell Atlantic's house and riser cable serving individual customers in multi-tenant dwelling units; interconnection through electrical manholes; and pole attachments and conduits (RCN Comments at 5-6). Lastly, CTC argues that the existing performance metrics "do not seem to have had any effect in improving Bell Atlantic's performance" (CTC Reply Comments at 2).

b. Bell Atlantic

According to Bell Atlantic, in the Consolidated Arbitrations, the Department adopted a comprehensive performance plan with hundreds of measurements (Bell Atlantic Comments at 6). Bell Atlantic argues that the parties should not be permitted to relitigate this performance plan in a collaborative proceeding (id.). Bell Atlantic states that the Department found in its Phase 3-B Order that "it will only consider specific changes to the [performance] standards adopted here if parties can show a compelling reason why such changes are necessary" (id. at 7, citing Phase 3-B Order at 34). Bell Atlantic argues that AT&T offered no justification for modifying the performance standards (id. at 7).

2. If additional metrics, business rules and standards are necessary, should they be developed through a collaborative process, as suggested by AT&T, carried over from New York, or developed through some other forum?

a. CLECs

CTC argues that Massachusetts cannot merely import the "New York experience" without "further significant regulatory involvement" by the Department (CTC Reply Comments at 1). Additionally, CTC argues that the "availability of a consistent

methodology does not mean that identical circumstances exist and that independent review is unnecessary" (id. at 2).

MCI argues that Bell Atlantic's loop provisioning problems are Massachusetts-specific (MCI Reply Comments at 3). While MCI agrees with AT&T that the Department should build upon the work performed by the New York collaborative (including performance metrics), MCI asserts that Massachusetts' network differs from New York's (id. at 4-5). Specifically, MCI argues that the Massachusetts network consists of many more IDLC loops than Bell Atlantic's New York network. This difference has created more difficulty in Massachusetts than in New York (id.). MCI argues further that a Massachusetts collaborative should address issues not yet covered by New York (id.). Finally, MCI argues that if Bell Atlantic is interested in developing uniform, region-wide processes for provisioning, it should also be interested in developing uniform, region-wide performance metrics (id. at 8).

MediaOne argues that while the Department can use information from New York to "inform its review" of Bell Atlantic's provisioning processes, and based on that review may adopt the results in New York largely unchanged, it is "outrageous" of Bell Atlantic to suggest that the Department adopt New York's rules without review (MediaOne Reply Comments at 3). CTC argues that "existing dispute resolution processes in practice in no way resemble either what the Department required in D.P.U. 94-185 [Investigation into IntraLATA and Local Exchange Competition, D.P.U. 94-185 (August 29, 1996)], or what is set forth in certain interconnection agreements" (CTC Reply Comments at 2).

b. Bell Atlantic

Bell Atlantic argues that the procedures developed through the collaborative process in New York apply or will apply to both New York and New England (Bell Atlantic Comments at 3-4). Bell Atlantic asserts that "because of the need for uniform operating procedures throughout the Bell Atlantic-North region, it would be redundant and counterproductive to address the same issues . . . in Massachusetts when . . . procedures have been agreed upon in New York" (id. at 4). Bell Atlantic notes that "[b]ecause of the need for consistent methods, [Bell Atlantic] intends to use the same interfaces, and business rules and gateways for pre-ordering, ordering, and provisioning UNEs" as it uses in New York (id. at 5). Bell Atlantic argues that if there are implementation issues particular to Massachusetts, KPMG's OSS testing is designed to identify them (Bell Atlantic Reply Comments at 5). Moreover, Bell Atlantic argues that although parties have the right to petition the Department to add a new performance standard or modify an existing one, none has elected to do so (Bell Atlantic Reply Comments at 5).

According to Bell Atlantic, if parties believe that additional performance metrics are warranted, they should adhere to the process set forth in the Consolidated Arbitrations (id.). Bell Atlantic argues that a collaborative is unnecessary because parties can exercise their rights to dispute resolution under the terms of their interconnection agreements or seek an expedited investigation pursuant to D.P.U. 94-185 (id. at 7). Bell Atlantic argues that unlike New York, Massachusetts "does not have the staff resources or a separate

non-adjudicatory staff that is trained to offer a 'mediation function' or provide 'guidelines or recommendations to the parties'" (id. at 5 n.2).

3. Should the development of additional metrics, business rules and standards be completed prior to OSS testing?

1. CLECs

MediaOne argues that to measure OSS performance successfully, the Department must adopt the applicable rules and procedures in advance of the testing (MediaOne Reply Comments at 5). To expedite the process, MediaOne argues that the Department can begin with the work created in New York and modify it through the collaborative process (id.). Lastly, MediaOne argues that the Department could evaluate how the adopted metrics and business rules should be incorporated into its current performance standard regime while KPMG's testing is taking place (id.). MediaOne argues that to ensure that the process proceeds as quickly as possible, the rules and procedures used to evaluate Bell Atlantic's performance and how remedies or penalties should be assessed and reported need not be done before testing starts as long as the metrics and business rules are agreed upon by the parties before OSS testing (MediaOne Reply Comments at 5). CTC and TRA both agree with AT&T that OSS testing should not begin before additional metrics are established through a collaborative effort (CTC Comments at 6; TRA Comments at 5, 7).

b. Bell Atlantic

Bell Atlantic argues that KPMG's testing of its OSS wholesale interfaces and processes, and the record on those procedures that will come out of the New York proceeding, will render much of AT&T's request for a collaborative process moot (Bell Atlantic Comments at 6). Bell Atlantic advises the Department not to act on AT&T's petition (to initiate a collaborative effort) until KPMG's testing is complete (id.).

III. SUMMARY OF THIRD PARTY TESTING OF BELL ATLANTIC'S OSS

As noted by the Department's public notice in D.T.E. 99-271,[(7)] published on June 29,1999, the Department is contracting with KPMG to act as the neutral, third-party administrator for the testing of Bell Atlantic's OSS. In the Department's request for responses ("RFR") to KPMG's proposal to evaluate Bell Atlantic's OSS ("KPMG Proposal"),[(8)] the Department described the federally-imposed requirement of nondiscriminatory OSS access that Bell Operating Companies, such as Bell Atlantic, must meet before they may offer in-region interLATA telephone service.

The Department's RFR explains that the term "OSS" refers generally to "the systems, information, and personnel that support a telecommunications carrier's network elements and services. These systems are essential to its ability to administer its telecommunications network and provide services to consumers." RFR at 3. In summarizing the Federal Communications Commission's ("FCC") Orders articulating the OSS standards with which Bell Atlantic must comply, the Department notes that Bell Atlantic must provide CLECs with access to OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing that is equivalent to what [Bell Atlantic] provides itself where there is a retail analog (the 'parity' standard) and generally must provide network elements, including OSS functions, on terms and conditions that provide an efficient competitor with a meaningful opportunity to compete.

Id. at 4 (citations omitted).

According to KPMG's proposal in response to the RFR,[(9)] a summary of which is also contained in the RFR, KPMG will:

(1) in Phase I of the testing, research Massachusetts-specific (a) business rules, systems and Electronic Data Interchange ("EDI") specifications, (b) available products and services, (c) regulations, (d) geographic dispersion, and (e) anticipated volumes for Bell Atlantic's OSS;

(2) in Phase II of the testing, (a) revise the New York Master Test Plan ("MTP") as a Massachusetts-specific MTP, (b) provide specifications for a Massachusetts-specific test bed, and revise New York test scenarios to include anticipated product mix for the Massachusetts market; and

(3) in Phase III of the testing, (a) review and revise the overall testing processes, (b) establish the testing infrastructure, the "test factory," the quality assurance ("QA") infrastructure, and connectivity with Bell Atlantic, (c) verify that EDI maps are identical to Bell Atlantic-New York, (d) review the test beds for completeness, (e) conduct and pass QA testing, (f) conduct the trial, (g) review the test bed, (h) conduct the regression test, (i) execute transaction testing, (j) verify provisioning, (k) validate bills, (l) conduct verification and validation testing on processes and metrics, and (m) analyze results and present report (see KPMG Proposal at 2-4).

IV. ANALYSIS AND FINDINGS

The Department is asked to open a proceeding to establish a collaborative process for telecommunications carriers to resolve certain disputes outside of the Department's adjudicatory procedures, but with Departmental supervision and, possibly, mediation. The Department declines to open a collaborative proceeding, like that requested by AT&T in its petition and proposal, at this time.[(10)] For the reasons set forth below, we

find that it is premature to establish a collaborative process to resolve provisioning disputes and to evaluate performance measures. Moreover, the Department recognizes the need for an expeditious dispute resolution mechanism and will announce the commencement of a rulemaking to that end.

The petitioner requests the creation of a collaborative to resolve disputes it has experienced or continues to experience with Bell Atlantic. According to the petitioner, the goal of this new process is to establish or modify, among other things, performance standards, business rules, and remedies, related to hot cuts and other provisioning issues. Comprehensive performance standards, developed with the participation of CLECs including the petitioner, exist in Massachusetts and were set forth in various phases of the Consolidated Arbitrations.[(11)] We recognize, however, that these standards were set at a time when CLECs and Bell Atlantic did not have as much provisioning experience as they do today. In addition, business rules were never addressed in the Consolidated Arbitrations. We agree with the commenting CLECs that these matters are as yet unaddressed in our Orders and, thus, in Bell Atlantic's obligations, and that they need to be addressed. The question is what is the most efficient way to do so.

Through the OSS testing process, detailed above, KPMG will identify the differences between New York's and Massachusetts' metrics, business rules, and standards. From an organizational-efficiency view, affecting both the carriers' resources and the Department's, it is advisable to refrain from opening a collaborative process at this time. The OSS process should address many, perhaps most, of the issues raised by the petitioner. As already provided in Phase II of the OSS testing process, carriers, such as AT&T, have the opportunity for comment on the MTP, including the need for new or modified metrics and business rules in Massachusetts. After due consideration of those comments, and in consultation with KPMG and the U.S. Department of Justice, the Department will decide which metrics and rules to include in the MTP.

The process that will create the Massachusetts MTP will identify the need to create additional or modified metrics and rules and the Department will, at that time, determine the best means to establish those standards (e.g., a collaborative process, an arbitration, an adjudication). The Department is sensitive to the argument that OSS testing is not designed to establish or test remedies and penalties that are applicable should Bell Atlantic not meet certain requirements. Establishing remedies and penalties for new standards, or for modified ones if applicable, will be a priority and will be addressed outside of the OSS testing process.

Indeed, the petitioner acknowledges that third party OSS testing will identify inadequate performance measurements and business rules, as evidenced in its initial comments in the D.T.E. 99-271 proceeding. According to AT&T, "OSS testing can reveal the inadequacies of existing carrier-to-carrier rules and the need to supplement or modify them in order to provision UNEs" (AT&T 271 Comments at 9). Moreover, AT&T argues in that same filing that one of the primary issues it seeks to resolve through the collaborative process requested in D.T.E. 99-20 is the determination of business rules, processes, and technical specifications applicable to the provisioning of UNEs by Bell

Atlantic in Massachusetts and that this determination "requires the identification of any differences between those rules and the rules applicable in New York and the determination of whether additional rules or processes are necessary to fill in any gaps" (id. at 10). KPMG's testing of Bell Atlantic's OSS is designed to achieve exactly that result (see Bell Atlantic Reply Comments at 5).

Lastly, AT&T argues that OSS testing must "identify each place in which Massachusetts systems differ and ensure that the business rules, processes and specifications appropriate for the Massachusetts systems are in place and work effectively when orders are placed in commercially reasonable volumes" (AT&T 271 Comments at 11). Again, the Massachusetts OSS test will be designed to address those issues, with the opportunity for CLEC comment. Given the "military-style" approach of the OSS test (i.e., "test until you pass"), deficiencies will be identified and resolved before KPMG issues its final report.

We want to emphasize further that denying AT&T's petition today does not foreclose the commencement of a collaborative or other type of process to establish or modify metrics or business rules. Indeed, the Department recognizes that the establishment of such a collaborative, similar to that instituted in New York, may at some future date be a desirable means to address the concerns raised by various CLECs in support of AT&T's February 8, 1999 petition.

V. ORDER

Accordingly, after due consideration, it is

ORDERED: That the petition of AT&T Communications of New England, Inc. to establish a mediated collaborative process to resolve problems in the wholesale provisioning of loops, number portability, and other elements or services by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, filed with the Department on February 8, 1999, be and is hereby DENIED without prejudice.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

1. Docketing AT&T's petition was merely an administrative act by the Department and did not open an adjudication or other proceeding. Thus, in this Order, the Department addresses the threshold question of whether to open an investigation, as requested by AT&T.

2. A "hot cut" refers to the process of Bell Atlantic disconnecting its loop facilities and reconnecting them to a competitor's switches in a coordinated manner.

3. OSS are an incumbent local exchange carrier's ("ILEC") systems, both mechanized and manual, used to provide services, such as provisioning, repair and billing, to end users. Through an ILEC's OSS, CLECs can provide, among other things, interconnection and resold services. See page 9, below, for further explanation of OSS.

4. As described in greater detail below, the Department is contracting with KPMG LLP ("KPMG") to act as the third-party administrator for the testing of Bell Atlantic's OSS. KPMG is an international consulting firm experienced in testing Bell Atlantic's OSS. It completed a similar test of Bell Atlantic-New York's OSS earlier this year and is

currently performing a combined test of Bell Atlantic-Pennsylvania's and Bell Atlantic-New Jersey's OSS.

5. The term "business rules" refers generally to the procedures and standards used by CLECs to place orders for Bell Atlantic's wholesale services. These rules are found in Bell Atlantic's CLEC handbook and other Bell Atlantic documents provided to CLECs.

6. Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (December 4, 1996) ("Consolidated Arbitrations").

7. D.T.E. 99-271 is a Department inquiry into Bell Atlantic's compliance with certain federal requirements that Bell Atlantic must meet before it may offer interLATA, or long distance, telephone service in Massachusetts.

8. See Request for Response to KPMG LLP Proposal to Perform an Evaluation of the OSS Interface Systems Offered by Bell Atlantic-Massachusetts, RFR-99-DPU-100, Commonwealth Procurement Access and Solicitation System (May 27, 1999). The RFR has been filed in D.T.E. 99-271 and is available for inspection at the Department's offices.

9. This proposal was provided to the Department on April 13, 1999 and has been filed in D.T.E. 99-271. It is available for inspection at the Department's offices.

10. Since the Department is denying AT&T's petition, we find no reason to act on the several petitions for leave to intervene.

11. See e.g., Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3 (December 4, 1996).